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Congress of the United States
House of Representatives
Washington, DC

September 24, 2009

The Honorable George Miller
Chairman, Committee on Education and Labor
2205 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman,

I appreciated the chance to testify before your Committee today on the Employment Non-Discrimination Act. Unfortunately, as you know, I had to rush my testimony because the Secretary of the Treasury was appearing before the Committee on Financial Services that I Chair, and from which I could be only very briefly absent. In my haste I neglected to make a couple of points, and one of them is of such importance that I am taking the opportunity to send it to you now.

I am referring here to the widespread pattern of employment discrimination that is carried out by state and local governments against people who are gay, lesbian, bisexual or transgender. Unfortunately, while in my mind this clearly violates the constitutional principles that govern public entities, federal courts have ruled – for example in a case against the Georgia Attorney General – that an explicit decision to fire an employee on the basis that she was a lesbian was an entirely legitimate decision for the Attorney General to make. And as was indicated by the facts of that case, there is a very clear reason why such discrimination is common at the state and local level.

Those states where no statute has been adopted to outlaw this form of discrimination are obviously the ones where prejudice based on sexual orientation and gender identity is the strongest. The very factors that prevent the law from being adopted are the ones that lead state and local officials, who are appealing to the electorates in which these prejudices are strong, to engage in discriminatory practices. I have in my years as an elected official, heard from a wide range of people who have been discriminated against in employment because of their sexual orientation or gender identity. And a very large number of them have reported that discrimination is practiced by state and local governments, where anti-LGBT feelings are very strong. Given the political pressure on state and local hiring authorities in those states that do not outlaw such discrimination, it is not at all surprising that there is this widespread discrimination at work, and it is also clear that because of the electoral nexus here, only a federal statute can provide protection against this discrimination to gay, lesbian, bisexual and transgender citizens.


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